Decision ___________________

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Amend General Order 77-K.	Rulemaking 03-08-019 (Filed August 21, 2003)

OPINION LEAVING GENERAL ORDER 77-L AS ADOPTED AND DIRECTING LARGE UTILITIES TO PROVIDE INTERNET SITE-LINKS TO SECURITIES AND EXCHANGE COMMISSION EXECUTIVE COMPENSATION REPORTS

Summary

General Order (GO) 77-L will not be amended and remains in effect as originally adopted in August 2004. Tier I Utilities (those with over $1 billion annual operating revenue) are directed to include in all future GO 77 reports an internet site-link to all documents filed with the Securities and Exchange Commission (SEC) that relate to executive compensation. This proceeding is closed.

Background

In December 2002, the Greenlining Institute/Latino Issues Forum (G/LIF) filed Petition for Rulemaking (P.) 02-12-039 requesting modifications to GO 77-K regarding the reporting of executive compensation data by utilities. The petition sought to increase the compensation levels that trigger reporting under the general order and to require regulated utilities and their holding companies to disclose executive diversity/ethnicity, compensation and philanthropic contributions in the GO 77 reports. The subject rulemaking closed P.02-12-039 by granting that portion regarding compensation levels that trigger reporting and denying the other portions. The rulemaking scope was limited to three specific issues: (1) should the compensation levels that trigger reporting be increased; (2) should Competitive Local Exchange Carriers (CLECs) and Nondominant Interexchange Carriers (NDIECs) be exempt from the general order; and (3) should utilities be allowed to file information on employee names as confidential under Pub. Util. Code § 583.

As directed in the rulemaking, interested parties filed opening and reply comments in October 2003. On January 30, 2004, Pacific Gas and Electric Company (PG&E) and the Greenlining Institute (Greenlining) filed a joint petition to modify the rulemaking by expanding its scope to additionally require the six Tier 1 utilities operating in California to report holding company executive compensation and to report executive compensation and bonuses awarded but not paid in the reporting year. The petition also requested that these utilities be required to file written verification by an independent auditor on disclosure of these elements and provide an internet site-link to all related documents filed with the SEC.

On March 1, 2004, the five other Tier 1 utilities filed responses opposing the PG&E/Greenlining petition. Generally, the other utilities stated this information is unneeded for the purposes of ratemaking, that holding company executive compensation was addressed and denied in the rulemaking, that executive compensation awarded in the prior year but not yet received was not within the scope of the rulemaking and that most of the requested additional information can be easily obtained from other sources.

Decision (D.) 04-08-055 adopted GO 77-L, superseding GO 77-K with revised rules in the three scoped areas. This decision also granted, in part, the PG&E/Greenlining Petition to modify the rulemaking by expanding its scope and soliciting further comments on the issues of Tier 1 utilities reporting holding company executive compensation and of reporting bonuses awarded but not paid in the reporting year. The decision further states that utilities may redact the individual names of all employees required to report compensation, but not the names of executive officers or attorneys.

On September 22, 2004, the Small Local Exchange Carriers (Small LECs), a party to the proceeding, filed an application for rehearing of D.04-08-055 regarding the issue of confidentiality of employee names arguing that all individual names, including executives and attorneys, should be redacted. In D.05-04-030, we denied rehearing and modified D.04-08-055 to allow utilities to redact, under certain conditions, the names of all individuals, including executives and attorneys, from their GO 77 reports.

On April 21, 2005, three employees of the Small LECs, as individuals, filed a joint petition in the State Court of Appeal, 3rd District, for a stay and writ of review of GO 77-L rules (D.04-08-055 and D.05-04-030) regarding the confidentiality of individual names (*Cherniss et al v. Public Utilities Commission, Case No. C049549*). The court denied the request to stay on April 22, 2005, and denied the petition for a writ of review on July 28, 2005.

Comments on Expanded Scope

As directed by an Administrative Law Judge (ALJ) ruling, comments relative to the expanded scope (adding holding company officers and bonuses awarded but not paid as reporting requirements) were due September 20, 2004 and replies September 30, 2004. All six Tier 1 utilities and Greenlining filed comments. The same parties, except PG&E, filed replies. Greenlining and PG&E support the proposed amendments to GO 77-L. The five other Tier 1 utilities oppose the amendments.

Greenlining/PG&E

The Greenlining/PG&E position in this proceeding is based on concerns related to other recent Commission proceedings (Application 02-11-017, *et al*) involving PG&E. In January 2004, PG&E awarded $84 million in retention bonuses to its senior executives (including those of its holding company). PG&E awarded these bonuses shortly after a formal settlement was announced in its emergence from bankruptcy (D.03-12-035) and within the same time frame of its 2003 general rate case. In light of the bankruptcy, the retention bonuses seemed excessive. In light of the rate case, it was not clear if the retention bonuses were paid by ratepayers or shareholders.

D.04-05-055 addressed these issues. It found that the retention bonuses were the sole responsibility of the shareholders and directed that additional accounting and reporting measures be put in place to ensure these bonuses will not be charged to ratepayers in the future. Ordering Paragraph 12 of D.04-05-055 directs PG&E to file a separate tab in its GO 77 reports to include:

- compensation of holding company executives listed its proxy statement.
- executive compensation awarded in the past year, but not yet received.
- written verification by an independent auditor that these items are fully disclosed.
- an internet site-link to all documents filed with the SEC relating to executive compensation.

The decision also encouraged PG&E executives to return any excess bonus payments. Considering the concerns raised in the PG&E cases, Greenlining/PG&E support making these same directives permanent requirements of GO 77 and applicable to all Tier 1 utilities.

Other Tier 1 Utilities

The other five Tier 1 utilities; Southern California Edison Company (Edison), San Diego Gas and Electric Company (SDG&E), Southern California Gas Company (SoCalGas), Pacific Bell Telephone Company dba SBC California (SBC) and Verizon California, Inc. (Verizon); all oppose adding additional filing requirements to GO 77-L, stating that:

- holding company compensation data is not relevant to ratemaking and frequently involves information applicable to other states.
- information from the SEC proxy statements includes data on holding company executives and is easily available from other sources.
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- if needed, the Commission can obtain case-specific information, in special cases similar to PG&E, without making additional burdensome requirements for all utilities.

Edison makes its SEC 10-K reports (Proxy Statements) available on its website and cites the subject rulemaking stating that, since the Proxy Statements are available from other sources, “it does not make sense” (Rulemaking 03-08-019, p.11) to require it in GO 77 reports.

SDG&E and SoCalGas also make their Proxy Statements available on their websites and further state (filing jointly) that no legal or factual basis is shown and no rate-setting nexus exists to support including holding company data or information on bonuses awarded but not yet paid, in GO 77 reports.

Verizon and SBC both state that telecommunication utilities like themselves, operating under the New Regulatory Framework (NRF), have a further separation between executive compensation rate-setting data in that price-cap information is used to set rates, not current levels of executive compensation.

Discussion

The purpose of GO 77 is to provide the Commission with data to be used in the rate-setting process to determine if salaries and other compensation received by utility officers and employees are excessive or out of line with prevailing standards. The data contained in the current GO 77-L and in the SEC documents filed by all Tier 1 utilities is sufficient for the purposes of ratemaking. GO 77-L requires all Tier 1 utilities to file annual compensation data on all executives and employees with an annual income of at least $125,000. The SEC Proxy Statements, for example, include complete annual compensation data of the five highest paid officers of the utility and the five highest paid of the holding company, including salary, bonuses, stock options, pension plans and severance packages.

Both Tier 1 telecommunication utilities operating in the state, Verizon and SBC, operate under the NRF for setting their rates. NRF utilities primarily use price-cap data to set rates and not executive compensation.

Commission general orders establish general requirements that apply to all utilities defined in the order. The issues of concern in the recent PG&E cases are specific to PG&E's emergence from bankruptcy and executive retention bonuses it paid in 2003-2004. Though we do not anticipate a similar set of circumstances to occur, these types of issues can be better and more fully addressed in case-specific directives similar to those in D.04-05-055, and not made as an overly burdensome requirement for all Tier 1 utilities. Considering the above, we will not further amend GO 77-L.

We will, however, require that all Tier 1 utilities include in future GO 77 reports an internet site-link to all documents filed with the SEC relating to executive compensation, specifically the Proxy Statements. This is consistent with D.04-05-055 and adopts the recommendation of PG&E and Greenlining regarding internet availability. We may choose to post these documents on the Commission's web-site (www.cpuc.ca.gov) in the future.

Conclusion

GO 77-L will not be amended. Tier 1 utilities shall include in all future GO 77 reports an internet site-link to all documents filed with the SEC relating to executive compensation. Today's decision closes this proceeding.

Categorization Proceeding and Need for Hearing

In the rulemaking, this proceeding was preliminarily categorized as quasi-legislative and we preliminarily determined that hearings were unnecessary. Based on the record, we conclude that the proceeding is properly categorized and that a public hearing is unnecessary.

Comments on Draft Decision

The draft decision of the assigned ALJ in this matter was mailed to the parties on December 28, 2004, in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. The draft decision ordered that GO 77-L not be amended, and included a requirement that Tier 1 utilities should provide the Commission an electronic copy of all GO 77 reports, as well as their SEC Proxy Statements, for posting on the Commission's web-site. Comments were filed on January 18, 2005 by PG&E and Greenlining. Reply comments were filed on January 24, 2005 by Edison, Verizon, SBC, and jointly by SDG&E and SoCalGas.

Greenlining disagrees with the draft decision and supports adding the requirements of holding company and executive bonuses to GO 77. Greenlining states that such reporting would curb excessive compensation, prevent unreasonable "golden parachutes" for retiring executives and allow for better use of new technologies. These arguments are generally without merit, were previously denied or go beyond the scope and intent of GO 77.

Greenlining also recommends that the Commission follow the reporting requirements now specific to PG&E (as directed in D.04-05-055) in developing general requirements in GO 77. In addition to reporting holding company executive compensation and bonuses awarded, these requirements include providing an internet site-link to SEC executive compensation documents as an attachment to the annual GO 77 report.

PG&E is generally opposed to any internet posting of these reports, but concludes that any employee-specific information should be redacted from GO 77 reports before being posted in the Commission web-site. In addition to employee names, PG&E also recommends that job titles be shown in generic, rather than descriptive, terms to better protect individuals with unique job titles.

In replies, the other five Tier 1 utilities oppose Greenlining's request to include any additional requirements in GO 77-L. These utilities also generally state that internet posting of GO 77 reports is beyond the scope of this proceeding and that no opportunity was given for comment on this issue, but support PG&E's position that employee-specific information should be redacted if internet posting is made. No parties opposed providing an internet site-link to SEC executive compensation reports.

Subsequent to mailing the draft decision, we addressed the issue of confidentiality and accessibility of GO 77 reports in D.05-04-030 that states the names of all individuals may be redacted from GO 77 reports. This decision, however, is silent regarding internet posting of GO 77 reports.

After considering the issues and above comments, and for consistency with D.04-05-055, we amend the draft decision to the extent that Tier 1 utilities will be required to include an internet site-link to all executive compensation documents filed with the SEC in future GO 77 reports, instead of providing their GO 77 reports for posting on the Commission's web-site. We may choose to post the SEC documents on the Commission's web-site in the future.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Kenneth L. Koss is the assigned ALJ in this proceeding.

Findings of Fact

1. GO 77 requires most utilities operating in California, including all Tier 1 utilities, to annually report the compensation data for it executives and certain employees.

2. The Commission uses GO 77 data for the purpose of setting the rates of most utilities.

3. The data filed in the GO 77 reports are open to the public and include employee names, salaries, expense accounts, contingent fees and reimbursed dues and donations.

4. The scope of the subject rulemaking was limited to three areas for possible revision to GO 77-K: annual compensation levels that trigger reporting to the Commission and establishing an automatic annual change to these levels; exempting certificated CLECs and NDIECs from the GO; and reporting information on employee names as confidential material, subject to Pub. Util. Code § 583.

5. In January 2004, Greenlining and PG&E filed a joint petition to modify the rulemaking to expand its scope to include, for Tier 1 utilities, the requirements of reporting the compensation of utility holding company executives, reporting bonuses awarded but not yet paid in the reporting year, providing written verification from an independent auditor on these report elements and providing an internet site-link to all related SEC documents.

6. D.04-08-055 adopted GO 77-L with revised rules for filing executive and employee compensation data within the three areas of the initial scope of the rulemaking.

7. D.04-08-055 also granted the Greenlining/PG&E petition to modify, in part, to expand the scope of the rulemaking to include and solicit further comment on Tier 1 utilities reporting holding company executive compensation and reporting bonuses awarded, but not paid in the reporting year.

8. The Small LEC's filed an application for rehearing of D.04-08-055 regarding the confidentiality of names in GO 77 reports.

9. D.05-04-030 denied rehearing in this matter and also amended D.04-08-055 to allow utilities to redact all individual names, under certain conditions, from their GO 77 reports.

10. On April 21, 2005, three employees of the Small LECs, as individuals, filed a joint petition in the State Court of Appeal for a stay and writ of review of D.04-08-055 and D.05-04-030.

11. The Court of Appeal denied the request for a stay on April 22, 2005, and denied the petition for a writ of review on July 28, 2005.

12. Tier 1 utilities annually file compensation data on its executives and of its holding company executives with the SEC.

13. SEC documents are open to the public and include data on salary, stock options, pension plans, bonuses and severance packages.

14. The Greenlining/PG&E petition to modify was filed relative to concerns in other Commission proceedings involving PG&E in 2003-2004 regarding its emergence from bankruptcy, general rate case and concurrent awarding of $84 million in executive retention bonuses.

15. D.04-05-055, relative to reporting executive compensation, directs PG&E to provide in its GO 77 reports compensation data for holding company executives, bonuses awarded but not paid in the reporting year and an internet site-link to related SEC executive compensation reports.

16. The issues and circumstances surrounding the PG&E bankruptcy, general rate case and retention bonuses are specific to PG&E, were appropriately addressed on a case-specific basis and do not apply to other Tier 1 utilities.

17. Both Tier 1 telecommunication utilities in the state (Verizon and SBC) operate under the NRF and do not use executive compensation data to set rates.

18. Requiring data on Tier 1 utility holding company executive compensation and on bonuses awarded but not paid in GO 77 reports is burdensome and unnecessary for the needs of the Commission.

19. For Tier 1 utilities generally, the data included in the GO 77-L reports and the SEC documents is sufficient for the Commission's ratemaking purposes.

20. Access to the publicly available SEC executive compensation reports of Tier 1 utilities is necessary for interested parties to review ratemaking data.

Conclusions of Law

1. GO 77-L should not be amended and this proceeding should be closed.

2. Tier 1 utilities (those with over $1 billion annual operating revenue) should be required to include in all future GO 77 reports, an internet site-link to all documents filed with the SEC related to executive compensation.

3. Today’s order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. General Order (GO) 77-L shall not be amended.

2. Tier 1 utilities (those with over $1 billion annual operating revenue) shall include in all future GO 77 reports an internet site-link to all publicly available documents filed with the Securities and Exchange Commission that relate to executive compensation.

3. This proceeding is closed.

This order is effective today.

Dated ______________________, at San Francisco, California.